APPENDIX A

Opinion of the Supreme Court of Mississippi

IN THE

SUPREME COURT OF MISSISSIPPI

No. 44,352

CLOUDIES SHINALL,

against

STATE OF MISSISSIPPI,

RODGERS, *Justice:*

This is the second time this case has been appealed to this Court. On the former appeal (*Shinall* v. *State,* 187 So. 2d 840, 1966), we reversed and remanded the case because of an apparent racial discrimination in the selection of the grand and petit juries. When the mandate of this Court reached the Circuit Court of Forrest County, Mississippi, the appellant was reindicted by another grand jury. He was again tried and convicted of murder, and sentenced to suffer death. Appellant has again appealed to this Court and contends that the trial court committed prejudicial error and that a new trial should be granted to him.

The defendant, Cloudies Shinall, appellant here, shot and killed Frederick L. Humphrey, a Constable of Justice of the Peace District No. 3 of Forrest County, Mississippi. The constable was not in his district at the time of the

shooting. The defendant is a Negro, and the constable was Caucasian.

The record reveals that on the day of the homicide, the defendant borrowed an automobile from a friend, L. C. Leggett, for the purpose of going to get his pay check. He took two friends with him, and when they returned to the defendant's neighborhood, Palmer's Crossing, they visited several taverns where they consumed a large quantity of beer. During the afternoon, someone in the automobile with the defendant discovered a twenty-two caliber pistol, holster and belt under the front seat of the automobile. The defendant took the pistol and buckled it upon his person. He exhibited the pistol in one of the beer taverns, and when officers came by the tavern, he gave the pistol, holster and belt to the proprietress. When the officers left, she returned them to the defendant. The defendant and his companions continued to move from one beer tavern to another, until a short time after dark. They got into Leggett's automobile again in front of the "Heat Wave", and started to drive away, but the motor ceased to function at a place where there was a ditch in the road. Thus, the defendant was in the process of navigating the rough place in the road. The constable pointed the light beam of his flashlight toward the automobile; whereupon, the defendant drove away at such a rapid rate of speed his companions became alarmed. They beseeched defendant to slow his speed or stop because they were afraid he would wreck the car and cause their deaths.

In the meantime, Constable Humphrey had gotten into an automobile belonging to another constable and had begun to follow the automobile driven by the defendant. The defendant drove at a rapid rate of speed across a blacktop road and made several turns until he came into a curve in the road in front of the Welborn home. The defendant was going at such a fast rate of speed he

could not traverse the curve and the automobile went out of control into the driveway of the Welborn home, where it struck a wire fence. The constable came up behind the automobile, stopped his car, got out, left the lights burning, and approached the automobile driven by defendant. Two witnesses said the officer had a flashlight in his hand. One witness said he also had a pistol in his hand. The constable directed the passengers to get out of the automobile, and when they alighted, the officer looked into the front seat where defendant was. At this time a gun fired. One witness saw the flash of the gun, and another witness testified that the defendant shot the officer. The two passengers ran away, and when they had gone some distance, they heard two more pistol shots.

Later that night, the defendant told one of his companions that after they fled, he walked up to Humphrey and shot the "son-of-a-bitch in the head." He later told L. C. Leggett, owner of the automobile, that he had killed "the son-of-a-bitch", naming Humphrey, with Leggett's pistol. The pistol was later recovered from Leggett. It was mailed to the Federal Bureau of Investigation, together with a bullet found in the body of deceased by the coroner, and upon examination by them it was discovered that the bullet from the body of the deceased matched the other bullets fired from the pistol of L. C. Leggett, so that an expert witness was able to testify that the bullet found in the body of the constable was fired from the pistol belonging to L. C. Leggett.

I

After the second indictment was presented by the grand jury, the defendant moved to quash the indictment upon the ground that there was a systematic discriminatory selection of the members of the grand jury. The attorneys for the State and defendant entered a stipula-

tion and offered testimony on this subject. It appears that since the former trial of this case, the Clerk of Forrest County has performed his duty as ordered by the Federal Court in that he has registered all colored persons who desired to vote. The record reveals that the Board of Supervisors has selected names for jury service without regard to race since the former trial of this case. The testimony reveals that since November 1965 nine Negroes have served on three grand juries in Forrest County; that Negroes have served upon petit juries in criminal cases; that a special venire of seventy-nine names summoned on the trial in the instant case contained fourteen Negroes. The trial judge overruled the motion to quash the indictment, and later overruled a motion to quash the petit jury. He took judicial notice that Negroes were not discriminated against in the selection of jurors.

On appeal to this Court, appellant complains that: (1) women were not required to serve on juries in Mississippi; (2) Negroes were systematically excluded from jury selection because, (a) they were being selected as they had been for many years, (b) that the Members of the Board of Supervisors did not select persons of "good intelligence, sound judgment, and fair character" as required by Mississippi Code Annotated section 1766 (1956) since they had selected persons they did not know; and (c) the State of Mississippi peremptorily challenged qualified colored persons left on the jury after the voir dire.

We are of the opinion that these contentions are not well-taken for the following reasons: (1) Women are not required to perform jury duty in Mississippi nor does the Federal Constitution require women to serve on juries in state courts. Mississippi Code Ann. § 1762 (1956); *State* v. *Hall*, 187 So. 2d 861 (Miss. 1966); *Pendergraft* v. *State*, 191 So. 2d 830 (Miss. 1966). (2) The evidence in this case shows that the Supervisors of Forrest County are

now selecting juries from the list of qualified voters of that county without regard to race or ethnic groups, and that the constitutional impediment of discriminatory jury selection for which this case was previously reversed has been removed. All qualified persons desiring to vote are now being registered by the Circuit Clerk of Forrest County, and from this list juries are now being drawn. (a) The argument that the juries are still being selected as they have been for many years is not well-taken, because the list from which the juries are now selected is a new list of qualified voters, including Negro citizens who have registered to vote. (b) We are of the opinion that Mississippi Code Annotated section 1766 (1956) in which the Board of Supervisors is directed to select "qualified persons of good intelligence, sound judgment, and fair character" is not a jurisdictional requirement, and although it is the duty of the Members of the Boards of Supervisors to select good citizens for jury service (*Black* v. *State,* 187 So. 2d 815, Miss. 1966), nevertheless, the jury laws of this State are directory and the selection of the jury list in an informal or irregular manner does not render it illegal. Miss. Code Ann. § 1798 (1952). The contention of appellant that the State of Mississippi, in the instant case, discriminated against Negroes by peremptorily challenging five Negroes, is not supported by the facts or by the law. The voir dire examination shows that most of the persons challenged by the State had been associated with the defendant. Moreover, the State is not required to accept jurors simply because they belong to the same ethnic group as the defendant. *Swain* v. *Alabama,* 380 U. S. 202, 85 Sup. Ct., 324 (1965); *Brown* v. *Allen,* 344 U. S. 443, 222 F. Supp. 10 (4th Cir. 1952).

Appendix A

II

The appellant contends that the attempted arrest of the appellant by Constable Humphrey was illegal because he was not a duly elected constable in District 3 and that when he began pursuit of defendant, no crime had been committed by him for which arrest should have been made. It is argued that deceased had a bad reputation for being a turbulent and violent person who arrested persons without probable cause, and for that reason the appellant had a right to resist an unlawful arrest and defend himself to the extent of taking the life of the deceased Constable Humphrey.

There is a list of cases heretofore decided by this Court in which we have held that a person may resist an unlawful arrest by such force as may be necessary, short of taking human life. Note 1. We are of the opinion that this line of authority is not applicable in the instant case because, under the facts here presented, the constable was attempting to make a legal arrest. Peace Officers and citizens may at any time arrest persons who are committing crimes in their presence, or to prevent a breach of the peace. Miss. Code Ann. § 2469 (1956). Moreover, the statutory law of this State expressly enjoins all constables "to keep and preserve the peace within his county". Miss. Code Ann. § 3887 (1956).

The defendant contends on appeal that at the time the constable began following him, he had committed no crime for which he could be lawfully arrested. Appellant cites the case of *Smith* v. *State*, 240 Miss. 738, 128 So. 2d 857 (1961) to support this contention. We are of the opinion that the *Smith* case is not authority here because the officer in that case had begun the pursuit of the defendant *before* the defendant had violated the traffic laws of the State. Whereas, in the instant case the constable did not begin pursuit of the defendant until *after* the

defendant had driven away at such a fast rate of speed his companions became alarmed for their safety. It is pointed out by *Blashfield* in his *Cyclopedia of Automobile Law and Practice*, Volume 8 (Perm. Ed.) section 5372, page 117, (1950), that reckless driving was a breach of the peace under the common law. Moreover, reckless driving is a misdemeanor under the statutory law of Mississippi. Miss. Code Ann. § 8175 (1956). See *Barnes* v. *State*, 249 Miss. 482, 162 So. 2d 865 (1964). We are of the opinion that the attempted arrest of the defendant, under the facts shown here, was not an illegal attempt to arrest him.

III

On the second trial, the defendant did not testify, but he sought to introduce certain witnesses to prove that the deceased constable had a bad reputation in the community for violence; that he had arrested some persons without probable cause and had pistol-whipped two of the proffered witnesses. The defendant also sought to show that Wilmer Kitchens, the regular Constable of Justice of the Peace District No. 3, worked with the deceased Humphrey and that as a team these two constables had a bad reputation for harassing colored citizens in and around beer taverns at Palmer's Crossing. The defendant offered to show that the deceased had drunk from a half-pint bottle of gin a short time before he was killed. The defendant also contends that he was not permitted to show that someone had threatened his life, and that bullets had been sent to defendant.

It will be observed that this testimony falls into seven distinct categories: (1) general reputation of deceased for violence; (2) reputation for unlawful arrests; (3) bad reputation of Constable Kitchens; (4) particular incidents of violence to others; (5) unlawful assault upon women by third

persons; (6) uncommunicated threats; and (7) deceased had drunk gin a short time before his death.

A minute examination of the proffered testimony has convinced us that the trial judge was correct in excluding this evidence, and for that reason we discuss each category of evidence separately (1 and 2). The testimony of certain witnesses as to the character of the deceased constable was properly excluded because this evidence was not admissible under the facts in this case. Ordinarily the character or reputation of the deceased person is not involved as part of the issue in a murder case, and proof relative thereto is generally inadmissible. It has often been pointed out that the violent, revengeful or bloodthirsty character of deceased cannot be shown as an excuse for a homicide because the unprovoked killing of a bad man is no less murder than the killing of the most peaceful and law-abiding person in the community. *Spivey* v. *State*, 58 Miss. 858 (1881); *Chase* v. *State*, 46 Miss. 683 (1872); *Jolly* v. *State*, 13 S. & M. 223 (Miss. 1849); *Dowling* v. *State*, 5 S. & M. 664 (Miss. 1846); 40 C. J. S. Homicide § 222 (1944).

There are exceptions to this general rule. The violent, dangerous and turbulent character of a deceased may be shown: (A) when, from the circumstances of the case, it is a part of the *res gestae*; (*King* v. *State*, 65 Miss. 576, 582, 5 So. 97—1888); (B) where the evidence of the homicide is wholly circumstantial (*Chase* v. *State, supra*); (C) where it is doubtful as to who the aggressor was at the time of the homicide (*Jolly* v. *State, supra; Cotton* v. *State*, 31 Miss. 504 (1856); or (D) where the immediate circumstances of the killing render it doubtful as to whether or not the act was justifiable. *Wesley* v. *State*, 37 Miss. 327, 346 (1859); *Chase* v. *State, supra.*

Before testimony of bad character of a deceased is admissible under one of the exceptions to the general rule,

the evidence must show that the issue of self-defense must at least be in doubt. *Spivey* v. *State, supra; Moriarty* v. *State,* 62 Miss. 654, 661 (1885); *Smith* v. *State,* 75 Miss. 542, 23 So. 260 (1898); *Anderson* v. *State,* 181 Miss. 300, 179 So. 560 (1938); *Wesley* v. *State, supra.* It is said in Wigmore on Evidence Volume 2 (3d Ed.) section 246, pages 44, 49-52 (1940) that:

> "Another and more specific form of limitation is the doctrine of 'overt act', peculiarly developed in Louisiana and Florida. The notion here is that the deceased's reputation can have a 'bona fide' bearing on the defendant's apprehension only where there occurs, at the time of the affray, some conduct of the deceased which might be otherwise colorless, but when interpreted by his known character becomes apparently an act of aggression. Thus there must be some 'overt act', *i.e.* of possible aggression before the reputation-evidence can be received. This is a wise and fair limitation, provided it be not further refined by details which generate into quibbles,—a proviso not always observed.
>
> "Two peculiar questions may arise under the overt-act form of the doctrine (1) Shall the question whether an overt act is sufficiently evidenced to lay the foundation for the reputation-evidence be *left entirely* in the hands of the *trial Court?* Unless our law is to become a mass of quibbles which no practitioner can master and every murderer will welcome, the answer must be in the affirmative. (2) May the defendant's mere unsworn assertion of an overt act (where permitted instead of his sworn testimony) be considered as in itself some evidence of an overt act? It certainly should be; but whether it is sufficient evidence for the trial court should never be considered on appeal."

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The only evidence in the record indicative of an overt act toward the defendant by the constable was the testimony of Lewis Willie Smith. He testified that the constable came toward the automobile driven by the defendant, after it had gone out of control and into a ditch, with a flashlight and a gun in his hand. As against this testimony, Smith testified that the constable did not threaten the defendant, and James Anderson, the other passenger in defendant's automobile, testified that he did not see a gun in the hand of the constable, and that the constable did not threaten either of the parties at the time of the attempted arrest. The malice of the defendant was clearly shown by the statements he made after the homicide, that he had walked up to the constable after he fell and shot "the son-of-a-bitch" again in the head. Moreover, the defendant knew that the person asking him to disembark was an officer and that it was his duty to submit to the arrest. *Pickett* v. *State,* 139 Miss. 529, 104 So. 358 (1925); *Mullis* v. *State,* 27 S. E. 2d 91 (Ga. 1943). Defendant had no right to kill the officer merely because he was afraid of him, or was afraid he would arrest him "for nothing."

(3) The testimony that Constable Kitchens had a bad reputation for violence was not admissible as evidence in the murder case where Constable Humphrey was killed, since Kitchens was not present at the time of the homicide. 40 C. J. S. *Homicide* § 223 at 1143, § 274 at 1229 (1944).

(4 and 5) Testimony of antecedent specific acts of violence alleged to have been committed by deceased was not admissible to show bad character. *Newsome* v. *State,* 197 Miss. 797, 20 So. 2d 708 (1945). Details of a previous difficulty between the deceased and a third person prior to the homicide is inadmissible to show bad character of the deceased. 40 C. J. S. *Homicide* § 210 at 1119 (1944); *Rich* v. *State,* 124 Miss. 272, 86 So. 770 (1921); *McCoy* v. *State,*

91 Miss. 257, 44 So. 814, 815 (1907); The Chamberlayne *Trial Evidence* § 621 at 591 (1936); *Thompson* v. *State,* 84 Miss. 758, 36 So. 389 (1904); *Carter* v. *State,* 167 Miss. 331, 145 So. 739 (1933).

(6) The proffered testimony rejected by the trial judge and complained of here is the testimony of L. C. Leggett. He was asked: "Now there had been a time, had there not, when one of the men whom you know was at Lucy Wilborn's place had sent some bullets by you to Cloudies Shinall, is that right? . . . A. He gave me some bullets that was in the back of his car. Q. And what did he say? What was the message he sent? . . . Q. Did someone send bullets with you and say these were what he was going to get Clyde with . . . ?" This testimony was clearly incompetent. There is nothing in the evidence to show a threat, and if such a threat had been shown with reference to bullets, it was not shown to have been made by the deceased Humphrey. Moreover, uncommunicated threats are inadmissible in evidence until after it has been shown that the deceased did some *overt act* at the time of the homicide which would cause the slayer to believe that his life was in imminent danger. 26 Am. Jur. *Homicide,* §§ 363, 364 (1940); *Newcomb* v. *State,* 37 Miss. 383, 400 (1859); 40 C. J. S. *Homicide,* § 126 (3) at 1009, § 207 at 1113 (1944).

(7) The appellant complains that he was not permitted to show that the deceased had drunk intoxicating liquor a short time before the homicide for the purpose of showing the state of mind of the deceased at the time of the killing. There are times when it is proper to permit introduction of testimony to show the intoxicated condition of the deceased for the purpose of showing whether or not there was any present and pressing necessity for the defendant to take the life of the deceased to protect his own, or to prevent great bodily harm. *Byrd* v. *State,* 154 Miss. 742,

123 So. 867 (1929); *Jones* v. *State*, 227 Miss. 518, 86 So. 2d 348 (1956). On the other hand, evidence of the intoxication of the deceased is irrelevant where the testimony shows that the defendant was the aggressor, or there is no testimony evincing the necessity for the accused to kill the deceased. 40 C. J. S. *Homicide*, § 224 at 1144 (1944).

At the time defendant offered testimony to show that the deceased had imbibed intoxicating liquor, there was no evidence indicating a necessity on the part of defendant to kill the constable, and testimony that the officer had been drinking was inadmissible.

IV

The appellant argues that the totality of the proceedings in the case violates defendant's right to due process of law under the Fourteenth Amendment to the Constitution of the United States. On the contrary, there is very little excuse given by the defendant for killing the constable under the facts in this case. The testimony is abundant that the defendant not only shot the constable at a time when the officer was trying to arrest him, but that after the constable had fallen and was helpless, he exhibited his malice by going up to the prone body of the officer and shooting him in the back of the head. We are of the opinion that the testimony is more than sufficient to show that the defendant was guilty of murder.

V

The appellant complains that he was not given instruction Number Five, which provides that if the jury believed, among other things, that the deceased officer pointed a pistol at the defendant, and he was in fear that bodily harm would be inflicted upon him, or that he would be killed, then it

was the duty of the jury to find the defendant "not guilty." This instruction was properly refused because one does not have the right to kill another merely because he is afraid of him; nor may one kill another because he is afraid that he will receive some bodily harm. The law does not justify one's taking the life of a person in defense of his own person except where there are reasonable grounds to apprehend a design to commit a felony or do some great personal injury to the accused, and there shall be imminent danger of such design being accomplished. Miss. Code Ann., § 2218 (1956). Moreover, there was no testimony in the instant case that the officer pointed his gun at the accused.

Defendant's instructions Numbered 10, 11, 13, 14 and 17 refused by the court are subject to the same criticism as is made of instruction Number Five. Moreover, instructions as to the general reputation of the deceased were properly refused.

Instruction Number Twenty advises the jury that a constable has no jurisdiction to arrest a person beyond the confines of the district for which he was elected. This was error. As above pointed out, it is the duty of a constable to make arrest anywhere in the county for crimes committed in his presence (Miss. Code Ann., § 2467—1956), or to preserve the peace (Miss. Code Ann., § 3887—1956), and he may be fined for failure to perform his duties (Miss. Code Ann., § 3892—1956). The instruction was properly refused.

The manslaughter instruction, Number Twenty-four, refused by the court, is repetitious of instruction Number Twelve granted to the defendant; moreover, the phrase "then you must find for the defendant" is confusing.

The defendant complains that instruction Number Six for the State is erroneous and is reversible error. It is as follows:

> "The Court instructs the jury for the State that in order to justify a homicide on the plea of self de-

fense there must be something shown in the conduct of the deceased indicating a present intention to kill or do some great personal injury to the slayer, and imminent danger of such intention being accomplished; mere fears or beliefs are insufficient. The danger must be such as to lead a person reasonably to believe that the killing was necessary to prevent the deceased from killing him or doing to him some great bodily harm."

This instruction is based upon Mississippi Code Annotated, section 2218 (1956).

Our trial courts have been granting, and this Court has been sustaining, this instruction, or one of similar verbiage since the early days of our State's jurisprudence. In *Coleman* v. *State,* 22 So. 2d 410 (Miss. 1945), this Court said that a similar instruction had been approved since *Wesley* v. *State,* 37 Miss. 327 (1859). See: *Dobbs* v. *State,* 200 Miss. 595, 29 So. 2d 84 (1947); *Bailey* v. *State,* 174 Miss. 453, 165 So. 122 (1936); *Johnson* v. *State,* 140 Miss. 889, 105 So. 742 (1925); *Harris* v. *State,* 47 Miss. 318 (1872); *Bailey* v. *State,* 174 Miss. 453, 165 So. 122 (1936); *Head* v. *State,* 44 Miss. 731 (1871); *Ransom* v. *State,* 149 Miss. 262, 115 So. 208 (1928); *Kendrick* v. *State,* 55 Miss. 436 (1877). This identical instruction is held to be good in the case of *Holmes* v. *State,* 199 Miss. 137, 24 So. 2d 90 (1945).

The defendant obtained fifteen instructions, and the State obtained seven. The instructions for the defendant were liberal and we find no reversible error in the granting, or refusing, instructions in this case.

VI

The appellant complains that the trial court committed reversible error in permitting the pathologist, Dr. Cook, to testify that the powder burns on the flesh of the deceased

indicated that the gun was a short distance from the body when fired. We are of the opinion, however, that the testimony was properly admitted. King v. State, 251 Miss. 161, 168 So. 2d 637 (1964).

VII

The evidence with reference to the head wounds of the deceased was properly admitted, and corroborated the testimony of witnesses that, after the officer fell, accused shot him in the back of the head, and this goes directly to the issue of malice as an element in the charge of murder.

There are other alleged errors assigned, and although they were not argued, nevertheless, we have carefully examined these assignments of error, and we do not find error for which this case should be reversed.

We therefore affirm the judgment of the trial court and set June 30, 1967, as the day for the execution of the appellant Cloudies Shinall in the gas chamber, as required by law.

AFFIRMED.

ALL JUSTICES CONCUR.

Note 1: *Bergman* v. *State,* 160 Miss. 65, 133 So. 208 (1931); *Shedd* v. *State,* 203 Miss. 544, 33 So. 2d 816 (1948); *Williams* v. *State,* 120 Miss. 604, 82 So. 318, 84 So. 8 (1919); *Williams* v. *State,* 127 Miss. 851, 90 So. 705 (1922); *Fletcher* v. *State,* 129 Miss. 207, 91 So. 338 (1922); *Walker* v. *State,* 188 Miss. 177, 189 So. 804 (1939); *Cutrer* v. *State,* 43 So. 2d 385 (Miss. 1949); *Coleman* v. *State,* 218 Miss. 246, 67 So. 2d 304 (1953).

APPENDIX B

Excerpted Proffered Testimony of Sheriff Gray

(797) Q. My question which I was about to put to you was as follows: Did you ever receive complaints from the citizens of Palmers Crossing, notably, such people as Mary Jones, Bamer Madison or any other people down there about the conduct of Mr. Humphrey and Mr. Kitchens with respect to the work that was going on down there as so-called police work?

By Hon. James Finch: Let the record show that even in the absence of the jury we object to this and move that it be stricken, that question, from this record.

By the Court: Yes, I would sustain as to that question.

By Hon. James Finch: Thank you.

By Hon. Raymond A. Brown: If your Honor pleases, I thought that on an offer of proof you would record the objection and allow me to proceed.

By the Court: Well I'm going to let you proceed. He objected and I sustained it, but go ahead.

Q. Would you answer that question?

By the Court: Let the record show I sustain the objection to that question in the presence of the jury. (798) Now you may go ahead and develop your testimony.

By Hon. Raymond A. Brown: Yes, sir. But that question was out of the presence of the jury, Judge.

By the Court: Yes, I know. I sustained the objection to that question being asked in the presence of the jury.

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By Hon. Raymond A. Brown: Thank, you, your Honor.

Q. Now Sheriff, is it not a fact that you received complaints from these citizens about the actions of these constables as law enforcement people in this area called Palmers Crossing? A. I have, a few.

Q. And is it not a fact that among the complaints that you received from this particular area, those from Bamer Madison and those from others, that they were complaints because of mistreatment of these people by these law enforcement officers in terms of assaults on women, beatings administered to men, and people arrested and brought in just for no real cause? In fact, you had to intervene from time to time, isn't that correct? A. I don't recall intervening, because a lot of times we get complaints from folks saying they're not drunk. In fact, about nine out of every ten you pick up they'll say they've only had two beers.

Q. Right. A. But I have had some complaints on that. Now I've picked up people myself who've complained and said they wasn't (799) drunk too.

Q. But you have never had anybody complain against you, I'll bet my life, that you tried to assault women or beat up anybody. Isn't that right? A. I don't recall any.

Q. I'd bet on it, that you have not. But I'd also ask you if it isn't a fact that with respect to these men, Kitchens and Humphrey as a team, that you have had such complaints made to you by people in terms of assaults on females? A. I probably,—I know of a couple, yeah.

Q. Now is it or is it not a fact that in your term of office where the Defendant was concerned that you received complaints with respect to mistreatment of him by Humphrey and Kitchens from time to time, this particular Defendant, Cloudies Shinall? A. No, not before the arrest.

Q. You have heard of them after the arrest? A. Yeah, just heard of it after the arrest.

Q. And you happen to be a very active officer who really knows that section, Palmers Crossing, and the individuals there, isn't that right? A. I know a few down there, yeah.

Q. In fact I think you know it very well indeed, and they know you. A. Well,—

Q. And these people have come to you for help in this particular regard, is that not right? A. They have, on several occasions, yeah.

Q. Yes; and even above and beyond that, as a result of this I believe you recommended the dismissal of Mr. Kitchens or the obtaining of his resignation as constable down there, isn't that right?

(800) By Hon. James Finch: Your Honor, we can't possibly see where this is—

By the Court: Well let him make his record. He's got a right to make a record.

By Hon. James Finch: Well let the record show that the State objects to it.

By the Court: Yes, all right.

Q. Isn't that correct, Sheriff Gray? A. I wouldn't necessarily say that, not actually, no.

Q. That's pretty close to true, isn't it? You wouldn't say everything I've said; but that's close to true, isn't it? A. Well to a certain extent, yeah.

Q. And the fact is that this man after this unfortunate tragedy to Mr. Humphrey did resign within a week or so, isn't that right? A. He did.

Q. And it was partly because of your investigation and of these complaints that he resigned, isn't that correct, Sheriff? A. It might have played a little part in it. I wouldn't say it carried the whole weight.

Q. No, no, I did not say that. I said partly because of your own investigation and these complaints. Is that right? A. I would say yes.

• • •

Appendix B

(1239) Mrs. Mildred Adams, introduced on behalf of the defendant, after having been first duly sworn, testified as follows:

Direct examination by Hon. Raymond A. Brown:

Q. What is your name, Mrs. Adams? A. Mildred Adams.

Q. Where do you live, Mrs. Adams? A. Palmers Crossing.

Q. How long have you lived there? A. About four years.

Q. Did you know the deceased Mr. Humphrey? A. Yes, Sir.

Q. Did you have an experience with Mr. Humphrey that was communicated to the Defendant that dealt with a particular act?

By Hon. James Finch: Object to his leading the witness, Your Honor.

By the Court: Yes, don't lead her. She is your witness.

Q. Would you tell the Court with respect to any incident that involved you and the deceased Mr. Humphrey? A. Yes, Sir.

Q. Go ahead, and would you speak up, please?

By Hon. James Finch: To which we object, Your Honor, any incident that occurred between she and Mr. Humphrey, we object to that.

By the Court: Yes, I sustain as to that.

(1240) Would you tell us with respect to Mr. Humphrey what, if any experience you've had with Mr. Humphrey—

By Hon. James Finch: We just objected to that, Your Honor.

By the Court: Yes, I sustain.

Q. Did you ever have any experience with Mr. Humphrey in which an assault was committed on you?

By Hon. James Finch: Now Your Honor, we object.

By the Court: Yes, I sustain as to that.

Q. Well did you in Palmers Crossing have any incident which involved Mr. Humphrey in the year 1964?

By Hon. James K. Dukes: Your Honor, we object again for the same reason.

By the Court: I sustain.

By Hon. Raymond A. Brown: If Your Honor pleases, this goes to the state of mind of this Defendant in the community.

By the Court: That's all right. I sustain.

By Hon. Raymond A. Brown: In other words, as to his state of mind the objection is sustained.

By the Court: That's right.

By Hon. Raymond A. Brown: Then may we have an offer of (1241) proof? That's all I can do.

By the Court: Yes, let the jury go in the jury room.

(Here the jury was excluded.)

* * *

(1242) Q. Now, Mrs. Adams, you know the Defendant, right? A. Yes, Sir.

Q. And it is a fact that you told him and his mother about this incident that we're going to talk about, isn't that true? A. No, Sir.

Q. Who did you tell about it? A. That I told Shinall?

Q. Yes. A. No.

Q. Well who did you tell about it? A. Well I don't know. I told many people, they knew about it. I don't know who I told.

Q. You told many people in the community, is that right? A. And a lot of them heard it from other people.

Q. And what you mean is you did not directly tell Clyde Shinall? A. No.

Q. Did you tell Mrs. Shinall about it? A. Yes, I told her.

Q. And did you tell her about it at the time that that Defendant was living in her home as her son? A. No, Sir.

Q. When did you tell Mrs. Shinall about it? A. When they came to me and asked me about it.

Q. Now when did this happen? A. This happened in '63.

(1243) Q. In 1963? A. In 1963, I think it was.

Q. And did you testify to this in open court before this? A. Yes.

Q. And would you tell His Honor just what happened with respect to this incident in '63? A. Well we was at The Black Cat, we had pulled up there and parked and Mr. Kitchens and Mr. Cotton came up behind us.

Q. Now don't talk so fast. Talk slowly. Mr. Kitchens and Mr. Cotton,—you mean Cotton Humphrey? A. Yes, Sir.

Q. Came up behind you? A. Yes, Sir.

Q. Tell us slowly in detail so that the lady can get your testimony. A. Mr. Kitchens got out and went in The Black Cat. Mr. Cotton got out and came to the car where we were at. He opened the door on the side—

Q. Not so fast. Speak loudly and slowly, please, Madam.

By Hon. James Finch: May the record show even in the absence of the jury, Your Honor, be-

cause this testimony if permitted to go into this record might tend to and will be and is improper even for some other Court to consider and even in the absence of the jury, she's already said that it happened in 1963—

By Hon. Raymond A. Brown: That's right.

By Hon. James Finch: —which makes it very remote (1244) plus the fact that it was never communicated to the Defendant—

By Hon. Raymond A. Brown: She said not directly.

By Hon. James Finch: Would you let me finish please, Counsellor?

By Hon. Raymond A. Brown: Sure.

By the Court: Yes, I am going to rule that this would not be competent and it wouldn't be competent here in the absence of the jury because it was not conveyed to the Defendant Shinall.

By Hon. Raymond A. Brown: If Your Honor pleases, this bears on the issue of general reputation, and she said very precisely that everybody in the community or that many people in the community knew about it, and this is the only way that I can develop it in terms of reputation. Now whether or not another court will determine whether it is proper or not, I submit is up to the court. To say that an upper court should not even consider it—

By the Court: It has always been my policy in this court to let you make your record. So go ahead and ask your questions.

(1245) By Hon. Raymond A. Brown: That's all I'm asking for, Sir.

Q. Now, you've stated it happened in 1963, and you were about to tell us at the time of the objection what

actually happened. Would you go ahead, please? A. Mr. Cotton came up on the side I was sitting on and opened the door. He told me to get out. I got out and stood up side the car. He said you been drinking? I said yes, sir. He said you're drunk. I said no, sir. He said go get in the car. I said—

Q. Now, Madam, I only suggest to you one thing, to speak slowly and distinctly so that everyone can hear you. You are mumbling downward and it's lost. A. Well that's the way I talk. I can't help that.

Q. Talk to me, please. A. And he said go get in the car. I asked him why. He said don't ask me no questions, just get in the car. And I said I will if you tell me what you're arresting me for. Then he pushed me and I asked him not to push me, just to tell me what he was arresting me for.

* * *

(1247) Q. And what did he say to you? A. He said to get in the car and don't ask him no questions.

Q. And did you do that? A. No, I didn't.

Q. What did you do? A. I told him I'd get in there when he told me what he was arresting me for, and he kept pushing me, and I pushed him back and we got to fighting.

Q. And what happened? A. Well, Mr. Kitchens came out and he saw we was fighting out there in the road and he told a boy—

Q. What was Mr. Humphrey fighting with? What did he have in his hand? A. He had a blackjack in his hand.

Q. What did you have in your hands? A. Nothing.

Q. And what do you weigh? A. At that time I weighed about a hundred and twenty-eight.

Q. And Mr. Humphrey, as I understand, was about six feet tall and a substantial man. A. Yes, sir.

Q. So he had a blackjack and you, at a hundred and twenty-eight, had nothing. Right? A. That's right.

Q. Go ahead. A. And Mr. Kitchens come out of the Black Cat and he saw we was fighting, so he told O. D. to go out there and see if he couldn't stop us. So he come out there and told me to stop trying to fight against him and get in the car, and he put me in the car.

Q. He put you in the car? A. Yes, sir.

Q. What then happened? (1248) A. We went around to a place called Roger Lee's Place and he stopped the car and Mr. Kitchens got out and went in and Mr. Humphrey stayed in the car.

Q. Mr. Kitchens got out and Mr. Humphrey stayed in? A. That's right.

Q. All right, go ahead. A. And Mr. Kitchens brought some more mens out there and me and Mr. Humphrey was still having words, and so he said—

Q. Who said? A. Mr. Humphrey. When Mr. Kitchens got back in he said I know what we ought to do with her, we ought to carry her down here in these woods.

Q. Yes? A. I said yeah, I heard about that, you all carrying people to the woods, and I said if you carry me down there some of us ain't coming out.

Q. You had heard about people saying about they carried people to the woods? A. Yeah, they—

Q. What had you heard? A. I had heard that they arrested colored mens and carried them to the jail and carried the women to the woods when they wanted to.

By Hon. James Finch: Your Honor, we object to this going into this record—

By Hon. Raymond A. Brown: Well, this is what reputation is, your Honor. This is what reputation is, what one hears in the community.

By the Court: Well, go ahead. Make your record.

Appendix B

(1249) Q. All right now, with respect to what you had heard, who have you heard this from, about them carrying the men to jail and the women into the woods? A. I had heard it from different friends around there I'd be talking to. When something would happen like that we all being in the community we would talk about it.

Q. You were in communication? A. Yes, Sir.

Q. Now how often did these things happen that you heard about? Was it weekly, monthly, yearly, once in a while or what? A. It happened about two or three times a month.

Q. And who would be involved in these things? A. It would be Mr. Kitchens, Mr. Cotton, and a colored woman.

Q. Mr. Kitchens, Mr. Cotton and a colored woman? A. Uh-huh.

Q. The colored woman being taken into the woods, right? A. Yes, sir.

Q. All right. Now then, because you had heard these things when you got in the car what was your state of mind? A. That I didn't want to go to the woods with them.

Q. And then what happened? A. Well that's why I was resisting.

Q. Yeah. Well what happened after you got in the car? A. Well after Mr. Kitchens brought two or three more colored mens out there and put them in the car and me and Mr. Humphrey was still having words, when we got up to there, I don't know the street, it was where the Sears Roebuck Warehouse is or Sears Roebuck Store,—I just saw the Sears sign,—and he told Mr. Kitchens to stop the car, said if she don't shut her mouth I'm going to shut it for her, and he came back there and opened the door—

(1250) Q. Now this lady is having to write this down, so you must slow up and talk more distinctly. Go ahead now. A. And he came back there and opened the door

and pulled me out and started hitting me again with the blackjack and we started fighting and I bit him. He told Mr. Kitchens to come get this black so and so off of him, and Mr. Kitchens got out and he hit me right here. (Indicating)

Q. Well, speak up so that the record can show. Mr. Kitchens got out and what? A. He hit me right here side the nose with a pistol, and I wasn't but half unconscious. I was never unconscious,—

Q. All right, go ahead. A. But it weakened me and then they put me back in the car and tried to shut the door on me, and this other fellow that was in there he grabbed me and pulled me out of the way, and when we got to the jail they let the colored mens out and when I started to get out they told me to sit there, and after the colored mens got out then both of them got me and carried me in the jail, and Mr. Print Jones he was the jailer then and he—

Q. Mr. Print Jones was the jailer? A. Yes, sir.

Q. What did he do? A. He asked Mr. Cotton what happened to him, and he told him that I had did that to him. He said the black so and so, you ought to have killed her. And then they started beating me again there in the jail.

Q. Who? Not just they. Who? A. Cotton and Kitchens.

Q. All right. Now then what happened after that? A. Well I hollered and two colored trustees came down and got me.

(1251) Q. Yes? Go ahead. A. And before they got me as I started in the door Mr. Cotton pushed me and I fell on the concrete steps.

Q. Mr. Cotton Humphrey? A. Yeah.

Q. Go ahead, what happened then? A. The trusties took me upstairs and locked me up, and Mr. Cotton come

up there and stood on the door steps and told me if I didn't shut my mouth what he would do to me.

Q. Now was this the last experience you had with Mr. Humphrey or with Mr. Kitchens? A. Yes, sir.

Q. You had no other experience with them? A. No.

Q. Now for the record, do you know the reputation of Mr Humphrey in the community for peace and violence? Yes or no? A. Yes.

Q. You do? A. Yes.

Q. Now is that reputation in the community good or bad? A. It is bad.

Q. It is bad as far as you know. A. Yes.

By Hon. Raymond A. Brown: That is my offer of proof, your Honor.

By Hon. James Finch: To all of which we object.

By the Court: Yes, I sustain.

By Hon. Raymond A. Brown: The same arguments are repeated, (1252) your Honor, as heretofore made in support of the other offer as to Mrs. Shinall.

By the Court: Yes, all right.

(Witness excused.)

* * *

(1276) Mr. E. D. (Doll) Sullivan, introduced on behalf of the Defendant, after having been first duly sworn, testified as follows:

Direct examination by Hon. Raymond A. Brown:

Q. What is your full name, sir? A. E. D. Sullivan. They call me Doll Sullivan.

Q. You are known as Doll? A. That's right.

Q. D-o-l-l? A. That's right.

Q. Now Mr. Sullivan, where do you live? A. At Palmers Crossing.

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Q. And how long have you lived in Palmers Crossing? A. Since forty-nine.

Q. And do you know the reputation of Constable Humphrey and Constable Kitchens in that particular community, their general reputations for peace and violence?

By Hon. James Finch: To which we object.

By the Court: Yes, sir, I sustain.

By Hon. Raymond A. Brown: Would you permit me to proceed, and then I'll make an offer of proof out of the presence of the jury as to reputation?

(1277) By the Court: Yes.

Q. Now, did you previous to March, 1965 have any specific experience with Mr. Humphrey and related to violence and arrest?

By Hon. James Finch: To which we object.

By the Court: Sustained.

By Hon. Raymond A. Brown: May I have an offer of proof?

By the Court: Yes, let the jury go in the jury room.

(Here the jury was excluded.)

Q. Now, Mr. Sullivan, you say you have lived in that community since 1949? A. Yes.

Q. By that community, I mean the Palmers Crossing area. A. Yes.

Q. Am I correct? A. Yes.

Q. Now since you have lived there since 1949, sir, have you come to know the general reputation of Constable Humphrey for peace and violence in the community?

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By the Court: Answer yes or no.

A. Yes.

Q. Now would you tell the Court exactly what—

By the Court: You can ask him now—

(1278) By Hon. Raymond A. Brown: I am going to ask him now what it is, Sir.

By the Court: He has said he knows the reputation, and the question now is, is it good or bad.

Q. Is that reputation good or bad? A. Bad.

Q. Now, you base this not only on your own personal experience but on information and from what you have heard from others in the community? You base it on your personal experience and from what you've heard from others, is that right? A. On myself and others.

Q: And others. Now, Mr. Doll Sullivan, was there an occasion in the quarters or in the Palmers Crossing section when you were arrested by Mr. Humphery? A. Yes, Sir.

Q. Now, where were you at the time that he arrested you? A. I was about a hundred and fifty feet from my front door.

Q. About a hundred and fifty feet from your front door, is that right? A. Yes, Sir, on my way to the house.

Q. You were on your way home? A. Yes, Sir.

By the Court: Can you qualify when this was?

Q. When was this? Was this before March of 1965, before the Humphrey killing? A. It was before.

Q. All right. Now about what year, going back from the (1279) Humphrey incident, how long back? Was it in 1965?

By Hon. James Finch: Object to his leading, Judge.

By the Court: Yes, don't lead him. Let him tell if he knows.

A. It was in sixty-four.

Q. All right. Now with respect to this, would you go ahead and tell us just what happened? A. I had been up on the hill in a room, a house rather, because Mr. Hudson was going to move the house we was living in, so I was on my way back to the house and just as I got near the house well Mr. Kitchens drove up side of me and I didn't even look back, didn't know who it was, and Mr. Cotton jumped out of the car and—

Q. Who is Mr. Cotton? A. Cotton Humphrey jumped out of the car and commenced beating me. Well Mr. Kitchens—

Q. What did he beat you with? A. A club.

Q. Where were you struck? A. On the head.

Q. And how often were you struck? A. I don't know how many times because Mr. Kitchens, he jumped out of the car and run around the car and struck me.

Q. Struck you with what? A. A pistol.

Q. A what? A. With a pistol and handcuffed me.

Q. So did you ask them what you were being arrested for? A. I didn't have time. They throwed me up in the car and Mr. Cotton, he said I ought to kill you. So I told them to (1280) pull the handcuffs off of me. Well Mr. Kitchens drove on up to the jail house with me. Well Mr. Cotton, on the way up here, he struck me a couple of more times in the face.

Q. What happened at the jail? A. Well, they locked me up. On Monday Morning they—

Q. Did you require any special medicine at the jail? A. They wouldn't give me none.

Q. Well I'm asking you, did you require any? A. Yes, Sir, I did.

Q. Well, why did you require any special medicine? A. Because I was hurting, and any time I gets hit on

the head or something like that I takes the headache, and I have to take medicine for a headache practically all the time, and if I'm struck on the head like that it's worse. Well, I asked for medicine but I didn't get it.

Q. Did you ask these two men, Humphrey and Kitchens? A. I asked the jailer, Mr. Print Jones.

Q. Now after this were you released from jail? A. Not at that particular time.

Q. Well when were you finally released from jail? A. After I went and served time on the county road.

Q. Now, did you see Mr. Humphrey and Mr. Kitchens together regularly in the Palmers Crossing section? A. Pretty regular.

Q. Would they be together or separate? A. Together most of the time.

Q. Now how often would you say you have seen these men riding together in the car? A. Practically every weekend, because I'd never hardly be out only on the weekend.

Q. Now, what have you heard concerning their reputations? You said you knew their reputations. What was it that (1281) you heard these men did on weekends or during the week where people were concerned?

By Hon. James Finch: To which we object even in the absence of the jury.

By the Court: Yes, I would sustain as to that.

By Hon. Raymond A. Brown: If Your Honor pleases, may I press it as that which formed the reputations.

By Hon. James Finch: Now Your Honor—

By the Court: He's already testified that he knew his general reputation and that that reputation was bad.

By Hon. Raymond A. Brown: These would be specifics that would support his knowledge of the reputation.

By Hon. James Finch: Your Honor, you can never go into specifics in the determination of this.

By the Court: I sustain.

By Hon. Raymond A. Brown: That is my offer of proof, Your Honor.

By Hon. James Finch: To which we object.

By Hon. Raymond A. Brown: And I press it, of course, on (1282) the same grounds that it shows state of mind and reputation of the deceased.

By Hon. James Finch: We object.

By the Court: I sustain. Bring the jury back.

(Witness excused.)

* * *

APPENDIX C

Pertinent Sections of Miss. Code Ann. 1962 Regarding Juror Selection

§ 1762. Who are competent jurors.

Every male citizen not under the age of twenty-one (21) years, who is either a qualified elector, or a resident freeholder of the county for more than one year, and has not been convicted of an infamous crime, or the unlawful sale of intoxicating liquors within a period of five (5) years and who is not a common gambler or habitual drunkard, is a competent juror; but no person who is or has been within twelve (12) months the overseer of a public road or road contractor shall be competent to serve as a grand juror. But the lack of any such qualifications on the part of one or more jurors shall not vitiate an indictment or verdict. However, be it further provided that no talesman or tales juror shall be qualified who has served as such tales juror or talesman in the last preceding two (2) years; and no juror shall serve on any jury who has served as such for the last preceding two (2) years; and no juror shall serve who has a case of his own pending in that court, provided there are sufficient qualified jurors in the district, and for trial at that term.

§ 1762-01. Resident freeholders not qualified electors—competent jurors by court order.

Whenever any judge of the circuit court of any circuit court district determines in his discretion that persons who are then, and have been for more than one (1) year previously thereto, a resident freeholder of any county in his district though not a qualified elector of that county, should be made and constituted a person qualified to serve as a competent juror of the county of that person's residence, but who is otherwise qualified, the said circuit judge is authorized to make and enter an order in term time or in vacation, upon

the minutes of the circuit court of such county to that effect and thereupon all persons in that county who are and have been such a resident freeholder shall thereupon be qualified, in accord with the terms of this act, to serve upon any jury in that county. Said order shall remain in full force and effect until terminated by an order of the judge of the circuit court district in which said county is situated, to be entered upon the minutes of the circuit court in that county in term time or vacation.

§ 1762-02. Who are competent jurors—after entry of court order.

Upon the entry of the aforesaid order by said circuit judge of the circuit court, and until its termination by an order made under Section 1 [§ 1762-01] hereof, supra, every male citizen not under the age of twenty-one (21) years, who is either a qualified elector, or who is and has been a resident freeholder of the county for more than one (1) year, and has not been convicted of an infamous crime, or the unlawful sale of intoxicating liquors within a period of five (5) years and who is not a common gambler or habitual drunkard, is a competent juror; but no person who is or has been within twelve (12) months the overseer of a public road or road contractor shall be competent to serve as a grand juror. But the lack of any such qualifications on the part of one or more jurors shall not vitiate an indictment or verdict. However, be it further provided that no talesman or tales juror shall be qualified who has served as such tales juror or talesman in the last preceding two (2) years; and no juror shall serve on any jury who has served as such for the last preceding two (2) years; and no juror shall serve who has a case of his own pending in that court, provided that there are sufficient qualified jurors in the district, and for trial at that term.

Appendix C

§ 1762-03. How lists of jurors procured.

As long as an order provided for by Section 1 [§ 1761-01] supra, is in force and effect, the board of supervisors at the April meeting in each year, or at a subsequent meeting if not done at the April meeting, shall select and make a list of persons to serve as jurors in the circuit court for the twelve (12) months beginning more than thirty (30) days afterwards, and as a guide in making the list they shall use the registration book of voters and the land assessment roll of the county, and shall select and list the names of qualified persons of good intelligence, sound judgment, and fair character, and shall take them as nearly as they conveniently can, from the several supervisors districts in proportion to the number of qualified persons in each, excluding all who have served on the regular panel within two (2) years, if there be not a deficiency of jurors. The clerk of the circuit court shall put the names from each supervisors district in a separate box or compartment, kept for that purpose, which shall be locked and closed and sealed, except when juries are drawn, when the names shall be drawn from each box in regular order until a sufficient number is drawn. The board of supervisors shall cause the jury box to be emptied of all names therein, and the same to be refilled from the jury list as made by them at said meeting. If the jury box shall at any time be so exhausted of names as that a jury cannot be drawn as provided by law, then the board of supervisors may at regular meeting make a new list of jurors in the manner herein provided.

In order that the board of supervisors may properly perform the duties required of it by this section, it is hereby made the duty of the circuit clerk of the county and the registrar of the voters to certify to the board of supervisors during the month of March of each year under the seal of his office the number of qualified electors in each of the several supervisors districts in the county.

If and when the above order of the district judge is terminated, then thereafter the land assessment roll of the county shall not be used or referred to in making a list of persons to serve as jurors in the said circuit court.

§ 1762-04. When act becomes operative—conditions.

The authority conferred by the terms of Sections 1, 2 and 3 [§§ 1762-01, 1762-02, 1762-03], supra, shall be exercised only on and after any date when persons who are and have been resident freeholders of a county for more than one (1) year are eliminated by amendment or otherwise as qualified or competent jurors under the provisions of Section 1, Chapter 308, Mississippi Laws of 1962, being Section 1762, Mississippi Code of 1942, Recompiled, and Section 2 of said Chapter 308, Mississippi Laws of 1962, being Section 1766, Mississippi Code of 1942, Recompiled.

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§ 1766. How lists of jurors procured.

The board of supervisors at the April meeting in each year, or at a subsequent meeting if not done at the April meeting, shall select and make a list of persons to serve as jurors in the circuit court for the twelve (12) months beginning more than thirty (30) days afterwards, and as a guide in making the list they shall use the registration book of voters and shall select and list the names of qualified persons of good intelligence, sound judgment, and fair character, and shall take them, as nearly as they conveniently can, from the several supervisors districts in proportion to the number of qualified persons in each, excluding all who have served on the regular panel within two (2) years, if there be not a deficiency of jurors. The clerk of the circuit court shall put the names from each supervisors district in a separate box or compartment, kept for the purpose, which shall be locked and kept closed and sealed, except when juries are drawn, when the names shall be drawn

from each box in regular order until a sufficient number is drawn. The board of supervisors shall cause the jury box to be emptied of all names therein, and the same to be refilled from the jury list as made by them at said meeting. If the jury box shall, at any time, be so exhausted of names as that a jury cannot be drawn as provided by law, then the board of supervisors may at any regular meeting make a new list of jurors in the manner herein provided.

In order that the board of supervisors may properly perform the duties required of it by this section, it is hereby made the duty of the circuit clerk of the county and the registrar of the voters to certify to the board of supervisors during the month of March of each year under the seal of his office the number of qualified electors in each of the several supervisors districts in the county.

§ 1768. List certified to circuit court.

A certified copy of the lists shall be immediately delivered by the clerk of the board of supervisors to the clerk of the circuit court, and shall be by him carefully filed and preserved as a record of his office; and any alteration thereof shall be treated and punished as provided in case of the alteration of a record.

§ 1769. Names of jurors not serving returned to box.

The slips containing the names of jurors drawn for any regular or special term shall be safely kept by the clerk until the sitting of the court at such term, and the names of such persons as shall fail to appear, or shall be excused by the court, or not required to serve in consequence of the failure of the term, or other cause, shall be returned to the box.

§ 1771. List of jurors not serving.

After the expiration of the twelve months for which any juror list is made, the clerk thereof shall make a list of

the names of all persons named in the list who did not serve as jurors for the week or as retained talesmen during the year on which the jury list was made, and shall deliver the list, duly certified, to the clerk of the board of supervisors before its first meeting in the next year; and those names shall constitute a part of the list of jurors for the ensuing twelve months, unless the board of supervisors shall, for reasons deemed good, cause some of said names to be omitted from the list.

§ 1772. How grand and petit jurors drawn.

At each regular term of the Circuit Court, and at a special term if necessary, the Judge shall draw, in open court, from the five (5) small boxes enclosed in the jury box, slips containing the names of sixty-two (62) jurors to serve as grand and petit jurors for the first week and thirty-six (36) to serve as petit jurors for each subsequent week of the next succeeding term of the court, drawing the same number of slips from each and every one of the five (5) small boxes if practicable, and he shall make and carefully preserve separate lists of the names, and shall not disclose the name of any juror so drawn; but only thirty-six names shall be drawn for each week or any term where a grand jury is not to be drawn. But, should it appear to the Judge that the above number of jurors will be insufficient for that particular term, the Judge may draw slips containing the names of up to eighty (80) jurors to serve as grand and petit jurors for the first week, and up to sixty (60) jurors to serve as petit jurors for any subsequent week or weeks of the term, such slips containing the names of jurors to be drawn in the manner as hereinabove provided. The slips containing the names so drawn shall be placed by the Judge in envelopes, a separate one for each week, and he shall securely seal and deliver them to the Clerk of the court, so marked as to

indicate which contains the names of the jurors for the first and each subsequent week. If in drawing it appears that any juror drawn has died, removed or ceased to be qualified or liable to serve as a juror, the Judge shall cause the slip containing the name to be destroyed, the name to be stricken from the jury list, and he shall draw another name to complete the required number.

§ 1773. Envelopes opened and venire issued.

The clerk shall safely keep the envelopes, without opening, until within fifteen days of the term for which the jurors were drawn, and shall then, in the presence of the sheriff and clerk of the chancery court, open the envelopes and make a list of the names in each. Each list shall be certified by those officers to be correct, and on each they shall certify whether the envelope containing the names appeared to have been opened or disfigured. The several lists of jurors, with the certificates, shall be copied into the minutes of the first day of court. After making and certifying the lists, the clerk of the circuit court shall forthwith issue and deliver to the sheriff separate venire facias for the jurors for each week, returnable on the proper day.

* * *

§ 1779. Grand jurors—how drawn.

The number of grand jurors shall not be less than fifteen nor more than twenty, in the discretion of the court; and they shall be drawn from the list of persons in attendance as jurors, in the following manner: The name of each juror shall be written on a separate slip of paper, and the name from each supervisor's district shall be placed in a separate box, hat or compartment, in open court, and there shall be drawn out, by a person designated by the judge, the number directed by the court; and said

names shall be drawn from each box in regular order until the number designated is drawn, and the jurors whose names are so drawn shall constitute the grand jury, and be impaneled and sworn as such. And the court shall poll the jury to ascertain whether any juror is directly or indirectly interested in the illicit sale of vinous, malt or spiritous liquors.

* * * *

§ 1792. How petit juries impaneled.

After the drawing of the grand jury, the remaining jurors in attendance shall be impaneled into three petit juries for the first week of court if there be a sufficient number left, and, if not, the court may direct a sufficient number for that purpose to be drawn and summoned; but if there be more than enough jurors for the three juries, or for two juries if the court shall direct only two to be impaneled, the excess may be discharged, or they may be retained, in the discretion of the court, to serve as talesmen; and, if so retained, they shall have the privilege of members of the regular panel, of exemption from service.